



Signed and Filed: February 21, 2017

UNITED : **DENNIS MONTALI**
NORTHERN U.S. Bankruptcy Judge
DISTRICT OF CALIFORNIA

23 MEMORANDUM DECISION ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
DEFENDANTS' MOTION TO DISMISS

25 On January 25, 2017, this court held a hearing on the motion
26 for summary judgment ("MSJ") filed by debtor and plaintiff First
27 Korean Christian Church of San Jose ("FKCC" or "Debtor"), a non-
28 profit religious California corporation, and the motions of the
individual defendants Dong Wuk Kim ("DW Kim") and Myung Il Youm

1 (collectively, "the Kim Defendants") to dismiss this adversary
2 proceeding ("MTD AP") and to dismiss the counterclaim filed by
3 Korean Evangelical Church of American ("KECA") against them ("MTD
4 CC") and Debtor.¹ For the reasons set forth below, the court will
5 grant the MSJ and deny the MTD AP and the MTD CC.²

6 I. BACKGROUND

7 FKCC filed the underlying chapter 11 bankruptcy case (the
8 "Main Case") on September 3, 2015, and continues as debtor in
9 possession. FKCC and KECA were co-borrowers on a loan secured by
10 church property located in Sunnyvale, CA (the "Property"). As of
11 the petition date, BBCN Bank held the underlying note and a valid
12 and perfected deed of trust lien on the Property. BBCN Bank filed
13 a motion for relief from stay ("MRS") on February 24, 2016; the
14 Kim Defendants, identifying themselves as the True FKCC, filed a
15 motion to dismiss the bankruptcy case ("MTD BK") two days later.

16 At a hearing on March 29, 2016, the court indicated that it
17 would deny the MTD BK, holding that Debtor, through its current
18 pastor, had the authority to file the chapter 11 petition and that
19 DW Kim did not have authority to act on behalf of FKCC. The order
20 denying the MTD BK was entered on April 4, 2016, and the Kim
21 Defendants filed a notice of appeal on April 13, 2016 (the
22 "Appeal"). The Appeal is currently pending in the U.S. District

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24
25 ¹Even though KECA was nominally identified as a defendant by
26 FKCC and FKCC was nominally identified as a counter-defendant by
KECA, their interests in this litigation align with each other, as
discussed below.

27 ²The court will make no ruling on the motions to remand Adv.
28 Proc. 15-5139 and Adv. Proc. 15-5151 (the "Related APs") that were
on calendar at the same time.

1 Court for the Northern District of California as Case No. 16-cv-
2 01959-EJD. A motion to dismiss the Appeal as interlocutory is
3 pending in that matter.

4 The court continued the hearing on BBCN Bank's MRS to allow
5 FKCC an opportunity to sell the Property for the benefit of the
6 estate. FKCC thereafter obtained an order authorizing it to hire
7 real estate brokers and, in July 2016, filed a motion to sell the
8 Property free and clear of liens. The court entered an order on
9 September 14, 2016, authorizing a sale of the Property for
10 \$6,650,000 and providing for payment in full of the BBCN Bank debt
11 as well as all secured tax liens. The sale has closed.

12 Pursuant to the sale order, the various and conflicting
13 interests asserted by Debtor, the Kim Defendants and KECA in the
14 Property were transferred to the net proceeds of the sale (the
15 "Net Funds"). The Net Funds were deposited into an interest-
16 bearing joint account, disbursement from which requires the
17 written consent of all parties or a judicial determination of the
18 parties' respective rights in the funds. *See Order Granting*
19 *Motion to Sell Real Property Free and Clear of Interests Combined*
20 *with Motion to Sell Real Property* at Docket No. 117 in the Main
21 Case.

22 On October 7, 2016, Debtor filed this adversary proceeding,
23 alleging that it and KECA owned the Property and thus now own the
24 Net Proceeds. KECA filed an answer seeking the same relief, and
25 asserting the counterclaim against the Kim Defendants. Both
26 parties requested that the Net Funds be released to the estate and
27 to KECA. The Kim Defendants filed the MTD AP on December 10,
28 2016, and the MTD CC on December 14, 2017. Debtor filed its MSJ

1 on December 27, 2016. Because Debtor has established as a matter
2 of law and undisputed fact that the estate and KECA are entitled
3 to the Net Funds, the court is granting the MSJ and denying the
4 MTD AP and the MTD CC.

5 II. JURISDICTION

6 The Kim Defendants erroneously contend that this court lacks
7 jurisdiction to resolve the dispute as to the ownership of the Net
8 Funds. This is a dispute over an identified sum of money in which
9 the Debtor claims ownership. The court has jurisdiction and
10 constitutional authority to determine whether identified property
11 constitutes property of the estate under 11 U.S.C. § 541(a). See,
12 e.g. *Waldron v. F.D.I.C. (In re Venture Financial Group, Inc.)*,
13 558 B.R. 386 (Bankr. W.D. Wash. 2016); see also *Velo Holdings,*
14 *Inc. v. Paymentech, LLC (In re Velo Holdings, Inc.)*, 475 B.R. 367,
15 387-88 (Bankr. S.D.N.Y. 2012) ("[t]he determination whether
16 something is property of the estate is a core matter") (collecting
17 cases). In addition, turnover actions are core pursuant to 28
18 U.S.C. § 157(b)(2)(E). Here, Debtor is seeking a determination
19 that the Net Funds are property of the estate which must be turned
20 over to it. This court has core jurisdiction to resolve the
21 disputed claims to the Net Funds. Inherent in such a resolution
22 is the issue of who controls Debtor: DW Kim or an appointed
23 successor.

24 The Kim Defendants also argue that the pendency of the Appeal
25 deprives this court of jurisdiction to decide the MSJ. They are
26 incorrect. Even though control of Debtor is a central issue in
27 both the Appeal and this adversary proceeding, the court can enter
28 a judgment as to disposition of the Net Proceeds. The appealed

1 order denying the motion to dismiss the chapter 11 case is
2 interlocutory. *In re 405 N. Bedford Dr. Corp.*, 778 F.2d 1374,
3 1379 (9th Cir. 1985). As the Ninth Circuit held in *In re Rains*,
4 428 F.3d 893, 904 (9th Cir. 2005), an appeal from an interlocutory
5 order is premature and does not transfer jurisdiction to the
6 appellate court absent leave of that court. *Id.*, citing *In re*
7 *United States Abatement Corp.*, 39 F.3d 563, 568 (5th Cir.1994)
8 (holding that premature notice of appeal from interlocutory
9 bankruptcy order was of no effect and the trial court retains
10 jurisdiction to enter final judgment) and *Albiero v. City of*
11 *Kankakee*, 122 F.3d 417, 418 (7th Cir.1997).

12 The Kim Defendants have also suggested that this court lacks
13 jurisdiction to resolve the dispute over entitlement to the Net
14 Funds as it implicates matters of religious doctrine and practice.
15 This court undoubtedly must "defer to the resolution of issues of
16 religious doctrine or polity by the highest court of a
17 hierarchical church organization." *Jones v. Wolf*, 443 U.S. 595,
18 602 (1979). Nonetheless, "the First Amendment does not dictate
19 that a State must follow a particular method of resolving church
20 property disputes. Indeed, 'a State may adopt any one of various
21 approaches for settling church property disputes so long as it
22 involves no consideration of doctrinal matters, whether the ritual
23 and liturgy of worship or the tenets of faith.'" *Id.* Thus, this
24 court cannot review decisions to excommunicate, a religious
25 matter, or matters involving religious doctrines and tenets. It
26 can, however, apply "neutral principles of law" such as corporate
27 governance in settling disputes as to ownership of church property
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1 as long as the analysis does not involve inquiry into religious
2 doctrine. *Id.* at 602-03.

3 Consequently, this court can consider the relevant by-laws
4 as well as minutes and orders from governing bodies to determine
5 whether a particular faction controls the Debtor and its property
6 disposition. Such a determination does not invoke religious
7 precepts but is instead a secular examination of documents of
8 governance.

9 The Kim Defendants also assert that they are entitled to a
10 trial by jury and thus this court cannot issue a dispositive
11 ruling. Assuming without deciding that they are entitled to a
12 jury trial, that entitlement does not preclude this court from
13 ruling on the MSJ or the MTD AP. In *Sigma Micro Corp. v.*
14 *Healthcentral.com* (*In re Healthcentral.com*), the Ninth Circuit
15 adopted the majority rule that the valid right to a jury trial
16 does not require the bankruptcy court to cede jurisdiction and
17 transfer the action immediately, but instead may retain
18 jurisdiction over the action for pretrial matters (such as motions
19 to dismiss or motions for summary judgment) until the matter is
20 ready for trial. *Id.* at 788 ("allowing the bankruptcy court to
21 retain jurisdiction over pre-trial matters, does not abridge a
22 party's Seventh Amendment right to a jury trial").

23 IV. STANDARDS FOR SUMMARY JUDGMENT

24 Summary judgment is appropriate when the moving party "shows
25 that there is no genuine dispute as to any material fact and the
26 movant is entitled to judgment as a matter of law." Fed. R. Civ.
27 P. 56(a), applicable here by Fed. R. Bankr. P. 7056. The moving
28 party "initially bears the burden of proving the absence of a

1 genuine issue of material fact." *In re Oracle Corp. Sec.*
2 *Litigation*, 627 F.3d 376, 387 (9th Cir. 2010). If the moving
3 party meets its initial responsibility, the burden then shifts to
4 the opposing party to establish that a genuine issue as to any
5 material fact actually does exist. See *Matsushita Elec. Indus. Co.*
6 *v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

7 "In evaluating the evidence to determine whether there is a
8 genuine issue of fact," the court draws "all reasonable inferences
9 supported by the evidence in favor of the non-moving party."
10 *Walls v. Central Contra Costa Transit Auth.*, 653 F.3d 963, 966
11 (9th Cir. 2011). It is the opposing party's obligation to produce
12 a factual predicate from which the inference may be drawn. See
13 *Richards v. Nielsen Freight Lines*, 602 F. Supp. 1224, 1244-45
14 (E.D. Cal. 1985), *aff'd*, 810 F.2d 898, 902 (9th Cir. 1987).
15 Finally, to demonstrate a genuine issue, the opposing party "must
16 do more than simply show that there is some metaphysical doubt as
17 to the material facts.... Where the record taken as a whole could
18 not lead a rational trier of fact to find for the nonmoving party,
19 there is no 'genuine issue for trial.' " *Matsushita*, 475 U.S. at
20 587 (citation omitted).

21 As discussed below, Debtor has established as a matter of
22 undisputed fact that it is the governing entity entitled to
23 recovery of the Net Funds and the Kim Defendants have not set
24 forth any material fact that reflects a genuine dispute as to that
25 entitlement. Drawing all reasonable inferences from the evidence
26 offered by the Kim Defendants in response to the MSJ AP, the court
27 concludes that summary judgment in favor of Debtor is appropriate.

28 V. UNDISPUTED MATERIAL FACTS

1 On May 29, 2008, Debtor entered into a membership agreement
2 with KECA; that agreement required that Debtor comply with the
3 bylaws of KECA and to place KECA as a title holder of the
4 Property. See Declaration of Chong Kon Cho ("Cho Decl.") ¶ 3;
5 Exhibit 1); Declaration of Nam W. Kim ("NW Kim Decl.") ¶ 6. In
6 the same year, Debtor and KECA executed the loan documents
7 providing Innovative Bank (subsequently taken over by BBCN) with a
8 deed of trust lien on the Property. NW Kim Decl. ¶ 3; Exhibits 3
9 and 4 to Cho Decl.

10 KECA is nationally subdivided into multiple district
11 conferences. The KECA district conference responsible for the
12 Debtor is the Northern California District Conference ("NCDC").
13 Cho Decl. ¶ 6. Because KECA's by-laws superseded the prior by-
14 laws of Debtor, Debtor's Board of Directors, upon deeming certain
15 conduct of its then presiding pastor (DW Kim) were contrary to the
16 morals of the church, requested in July 2012 that KECA (through
17 the NCDC) suspend him from his position as senior pastor. NW Kim
18 Decl. ¶ 10. The disciplinary proceedings were to be completed in
19 accordance with the disciplinary laws of KECA. Cho Decl. ¶¶ 7-10,
20 Exhibit 8. NW Kim Decl. ¶ 10.

21 In August 2012, the NCDC suspended DW Kim's ministry duties
22 until disciplinary hearings were concluded and appointed Sang Kook
23 Lee as a temporary governing pastor. NW Kim Decl. ¶ 11; Cho
24 Decl., Exhibits 5 and 6). On September 14, 2012, the NCDC
25 Disciplinary Committee excommunicated DW Kim and stripped him of
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1 all ministry duties.³ NW Kim Decl. ¶ 12; Cho Decl., Exhibit 7.
2 September 14, 2012, counsel for Debtor sent a letter to DW Kim
3 terminating him as pastor. NW Kim Decl. ¶¶ 12-13; Exhibits 3 and
4 4. On September 17, 2012, NCDC issued an official notice that DW
5 Kim was excommunicated and stripped of all powers regarding the
6 church and that two elders Myoung I. Youm and Jin-Gook Kim were
7 suspended from their duties. NW Kim Decl. ¶ 15; Cho Decl.,
8 Exhibit 8.

9 On November 1, 2012, DW Kim filed an appeal to the KECA
10 national body. Cho Decl. ¶ 8. The excommunication decision
11 remained effective pending appeal. Cho Decl. ¶ 13, Exhibit 20.
12 On November 13, 2012, the General Assembly of KECA prepared a
13 document entitled "The Ruling Statement of the Judgment Committee"
14 stating:

15 Since there is an illegality matter on the judgment
16 procedure and the fact that there is not evidence beyond
17 a reasonable doubt on the criminal acts of [DW Kim], we
request that you annul the ruling from the original
trial and propagate [DW Kim's] innocence.

18 DW Kim Decl., Exhibit 5, part 2(B). This unsigned document
19 reflects a recommendation by the Judgment Committee that the
20 Regional Council vacate the excommunication order in accordance
21 with Article 5 (Paragraph 7) and Article 3 (Paragraphs 6 and 7) of
22 the Judgment Committee Operation Regulation, and Article 20 of the
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24
25 ³As noted in the Jurisdiction discussion above,
26 excommunication is a matter pertaining to religion and is not
27 appropriate for court involvement. However, the issue of whether
DW Kim remained as pastor is a secular matter involving principles
of corporate governance and thus falls within the scope of this
court's jurisdiction to determine who controls Debtor and what
constitutes property of the estate under section 541 of the
28 Bankruptcy Code.

1 Disciplinary Action Regulation. *Id.* at 3(b)(1) and (2).

2 DW Kim has offered the "Ruling Statement of the Judgment
3 Committee" in an effort to establish a dispute as to a material
4 fact, i.e., whether he was stripped of his position as pastor.
5 As noted above, however, the Kim Defendants have not authenticated
6 the report by a declaration from any member of the committee that
7 the report was in fact adopted by the Assembly. But even if a
8 signed, authenticated report existed, it would not have been final
9 and would have been subject to further review of the Regional
10 Council.

11 On February 19, 2013, the NCDC notified DW Kim that his
12 appeal to the General Assembly did not overturn the termination of
13 his services as pastor. Cho Decn., Exhibit 10. It denied DW Kim
14 access to the Property and to the podium and dispatched Sang Kook
15 Lee to serve as the governing pastor. *Id.*

16 Thereafter, and quite significantly to the issues before the
17 court, the Special Judgment Committee met during the annual
18 meeting of KECA in April 2013 to determine the appropriate
19 disciplinary actions to be taken with respect to DW Kim. Cho
20 Decn., Exhibit 11. On April 10, 2013, the Special Judgment
21 Committee issued its judgment finding DW Kim guilty of the charges
22 against him and dismissing him from his position as a pastor,
23 consistent with the NCDC decision to strip him of his ministry
24 duties. Cho Decn., Exhibit 12; Decl. of Nam W. Kim at ¶¶ 20-21.
25 Thus, regardless of the status of the "first deliberation" by the
26 General Assembly and regardless of the status of his
27 excommunication from membership, DW Kim was no longer the pastor
28 of FKCC as a matter of corporate law.

1 Accordingly, on September 16, 2013, KECA notified its
2 Northern California District Office of the Notice of Judgment by
3 the Special Disciplinary Committee regarding its decision to
4 dismiss DW Kim as pastor. Cho Dexn., Exh. 14.⁴ The decision and
5 order, which was sent with the Notice of Judgment, concluded:

6 Therefore, based on the state[d] reasons, and based on
7 the Article 4, Section 1 of the Law of Disciplinary
8 Punishment, [and] according to the Article 5, Section 3
9 (Dismissal from Office) of the Law of Disciplinary
Punishment, the Special Disciplinary Committee hands
down the Judgment of Dismissal from Office to the
appealer, Mr. Dong Wuk Kim.

10 *Id.*

11 In November and December 2013, after he was stripped of his
12 duties and rights as pastor, DW Kim and his supporters convened
13 several meetings at which some church members voted to withdraw
14 from membership in NCDC and KECA. Cho Dexn. ¶¶ 22-23, Exhibit 16.
15 However, as he had been formally terminated as pastor of FKCC
16 months before these meetings, such withdrawal was ineffective and
17 against existing regulations and rules of operation. *Id.* Despite
18 the continued eviction efforts of KECA and Debtor, DW Kim and his
19 supporters continued to occupy the Property. Cho Dexn. ¶ 23,
20 Exhibit 17. While the supporters of DW Kim (the "DW Kim
21 Faction") warred with KECA and Debtor, Debtor was unable to pay
22 BBCN Bank as required by the loan documents. Declaration of Kelly
23 Cho in Support of BBCN Bank's Motion for Relief from Stay ¶¶ 24-
24 29, Docket 58-3 in the Main Case. Faced with a possible
25 foreclosure, Debtor filed its chapter 11 petition. The DW Faction
26 moved for dismissal of the case, asserting that it was the true

27 ⁴The exhibits to the Cho Declaration are out of order, with
28 Exhibit 17 preceding Exhibit 14. Exhibit 14 can be found at
Docket No. 26-9, pages 30-34.

1 church and that Debtor lacked authority to commence the underlying
2 bankruptcy case. See *Motion to Dismiss Pursuant to 11 U.S.C. §§*
3 *1109 and 1112(a)*, Docket No. 61 in the Main Case. The court
4 disagreed and denied the dismissal motion for the reasons set
5 forth on the record on March 29, 2016.

6 VI. ANALYSIS

7 In support of its MSJ, Debtor has presented undisputed
8 evidence that it and KECA share title on the Property and are both
9 signatories to deeds of trust under which the Property secured the
10 obligations of Debtor to BBCN Bank. Moreover, as set forth in the
11 Undisputed Material Facts section above, Debtor has presented
12 significant and verified evidence that DW Kim was stripped of his
13 position as the official pastor for Debtor in 2013. In other
14 words, Debtor met its initial burden of showing the absence of a
15 material and triable issue of fact as to DW Kim's ouster and its
16 entitlement to the Net Proceeds through control of Debtor by its
17 current pastor.

18 Given that Debtor met its initial burden on the MSJ, the Kim
19 Defendants had to come forward with evidence demonstrating that
20 there are genuine issues of material fact to be decided at trial.
21 A fact issue is "genuine" if there is enough evidence for a
22 reasonable trier of fact to make a finding in favor of the
23 non-moving party. *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992
24 (9th Cir. 2001). A fact is "material" if, "under the governing
25 substantive law ... it could affect the outcome of the case."
26 *Caneva v. Sun Cmtys. Operating Ltd. P'ship (In re Caneva)*, 550
27 F.3d 755, 760-61 (9th Cir. 2008) (quoting *Thrifty Oil Co. v. Bank*
28 *of Am. Nat'l Tr. & Savs. Ass'n*, 322 F.3d 1039, 1046 (9th Cir.

1 2003) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
2 248-49 (1986))).

3 Here, the Kim Defendants have not presented a "genuine" issue
4 of material fact which could result in a jury reasonably finding
5 in their favor. First, the Kim Defendants' primary argument is
6 that KECA reversed the disciplinary rulings of the NCDC and thus
7 DW Kim retains his authority as the pastor of Debtor. As
8 discussed in the Undisputed Material Facts section above, however,
9 the document upon which the Kim Defendants rely is not signed and
10 has not been authenticated. Moreover, in subsequent rulings, KECA
11 upheld the disciplinary findings against DW Kim and reaffirmed his
12 removal as pastor of Debtor. Furthermore, the Kim Defendants'
13 unilateral efforts to negate the excommunication order by
14 disclaiming Debtor's membership in KECA are ineffective and
15 contrary to governing rules of operation and governance. The Kim
16 Defendants have not set any other cognizable arguments that they,
17 and not the current pastor of Debtor, D.Y. Kim, are entitled to
18 control the Debtor and the Net Proceeds.⁵

19 **VII. CONCLUSION**

20 Because Debtor has shown that there is no genuine issue as to
21 any material fact and that it is entitled to judgment as a matter
22 of law, the court will enter an order granting the MSJ, orders
23 denying the MTD AP and the MTD CC, and a judgment releasing the
24 Net Proceeds to Debtor and KECA. Counsel for Debtor should upload
25 orders granting the MSJ and denying the MTD; KECA should submit an

26 ⁵At the hearing on January 25, 2017, counsel for Debtor
27 conceded the obvious, namely that if the court granted the MSJ,
28 Debtor's disposition of the Net Proceeds would be governed by
applicable bankruptcy and non-bankruptcy law.

1 order denying the MTD CC. The orders should reflect that the
2 relief is being granted (or denied) "for the reasons set forth in
3 the Memorandum Decision entered on [Date] at {Docket Number}."
4 Upon entry of these orders, counsel for Debtor and KECA should
5 submit a single judgment on the complaint and the counter-
6 complaint. When uploading the orders, counsel for Debtor and KECA
7 should file on the docket a proof of service indicating that they
8 have served the proposed orders and judgment on counsel for the
9 Kim Defendants, or the orders should reflect opposing counsel's
10 agreement as to form.⁶

*** END OF MEMORANDUM DECISION ***

26 ⁶Based on comments by Debtor's counsel at the hearing, the
27 court assumes Debtor will now dismiss the Related APs, rendering
28 the motions to remand moot. If that is not the case, counsel
should set them for status conference on the court's regular San
Jose calendar.